

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:

EASTERN LIVESTOCK CO., LLC
DEBTOR

CASE NO. 10-93904
CHAPTER 11

**RESERVATION OF RIGHTS AND OBJECTION TO INTERIM ALLOWANCE AND
INTERIM PAYMENT OF THE FOURTH INTERIM FEE APPLICATION OF
DEVELOPMENT SPECIALISTS, INC. [ECF 2172] FOR
COMPENSATION AND REIMBURSEMENT OF EXPENSES
AS CONSULTANT FOR JAMES A. KNAUER, CHAPTER 11 TRUSTEE**

Come Alton Darnell, East Tennessee Livestock Center, Inc., Moseley Cattle Auction, LLC, Piedmont Livestock Company, Inc., and Southeast Livestock Exchange, LLC (collectively, the “Parties”), by counsel, and hereby object (the “Objection”) on an interim basis and reserve for the final fee application all objections to the allowance and payment of fees and expenses of Development Specialists, Inc. (“DSI”) as Consultant for James A. Knauer, Chapter 11 Trustee.

In support of this Reservation of Rights and Objection, the Parties respectfully state as follows:

BACKGROUND

1. On December 27, 2010, after consideration of the Notice of Appointment and Application for Order Approving Appointment of Trustee [ECF No. 98] and the accompanying Trustee’s Verified Statement and Notice of Acceptance [ECF No. 98-1] and sworn Affidavit of Disinterest [ECF No. 98-2], the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [ECF No. 102] in the above-captioned bankruptcy case.

2. On December 30, 2010, James A. Knauer, as Chapter 11 Trustee for the Estate of Eastern Livestock Co., LLC (the “Trustee”), filed his Application for Approval of Employment

of Development Specialists, Inc. as Consultant to Chapter 11 Trustee [ECF No. 117]. This Application was approved by Order of the Court [ECF No. 257] on February 8, 2011. DSI had previously served as state court ordered receiver in a prepetition state court action initiated by Fifth Third Bank.

3. On June 2, 2011, the Trustee on behalf of DSI filed its First Interim Application of Development Specialists, Inc. for Compensation and Reimbursement of Expenses as Consultant for James A. Knauer, Chapter 11 Trustee [ECF No. 523] (the “First Interim Application”). This Application covered the time period from December 28, 2010 through April 30, 2011 and was in the approximate amount of \$817,000 of fees. The First Interim Application was approved on an interim basis by an Order of this Court entered on July 15, 2011 [ECF No. 604]. It was promptly paid by the Trustee from funds he held and controlled within the Estate.

4. On November 11, 2011, the Trustee on behalf of DSI filed its Second Interim Application of Development Specialists, Inc. for Compensation and Reimbursement of Expenses as Consultant for James A. Knauer, Chapter 11 Trustee [ECF No. 821] (the “Second Interim Application”). This Application covered the time period from May 1, 2011 through August 31, 2011 and was in the approximate amount of \$468,000 of fees. The Application was approved on an interim basis by an Order of this Court entered on December 19, 2011 [ECF No. 918]. It was promptly paid by the Trustee from funds he held and controlled within the Estate.

5. Approximately one year later, on November 21, 2012, the Trustee on behalf of DSI filed its Third Interim Application of Development Specialists, Inc. for Compensation and Reimbursement of Expenses as Consultant for James A. Knauer, Chapter 11 Trustee [ECF No. 1551] (the “Third Interim Application”). This Application covered the time period from September 1, 2011 through October 31, 2012 and was in the approximate amount of \$936,000 of

fees. The Application was approved on an interim basis by an Order of this Court entered on December 27, 2012 [ECF No. 1695]. It was promptly paid by the Trustee, post-confirmation.

6. On May 17, 2013, the Trustee on behalf of DSI filed its Fourth Interim Application of Development Specialists, Inc. for Compensation and Reimbursement of Expenses as Consultant for James A. Knauer, Chapter 11 Trustee [ECF No. 2172] (the “Fourth Interim Application”), which is at issue herein. It covers the time period from November 1, 2012 through March 31, 2013 and is in the approximate amount of \$323,000 of fees.

7. The total of the four interim fee applications of DSI, for fees only and not including actual expenses incurred, is slightly in excess of \$2.5 million.

OBJECTION AND RESERVATION OF RIGHTS

8. For reasons previously stated regarding nondisclosures by the Trustee and lead counsel for the Estate, the Parties continue in their objections to the interim allowance and interim payment of fees and expenses for DSI on an interim basis. Due to the undisclosed material limitations upon the Trustee as the sole fiduciary representative of the Estate, some of the services provided by DSI as the Consultant to the Trustee may have been unnecessary and not beneficial to the Estate, as futile activities and likewise tainted by the Trustee’s nondisclosures.

9. To the extent that the Court enters an order approving the Fourth Interim Application, the order will not be a final approval of the fees or expenses. *See Matter of Taxman Clothing Co.*, 49, F.3d 310, 312 (7th Cir. 1995) (“The law is clear . . . that all interim awards of attorney’s fees in bankruptcy cases are tentative.”) (citations omitted); *In re Eckert*, 414 B.R. 404, 409 (Bankr. N.D. Ill. 2009) (“Interim fee awards under 11 U.S.C. § 331 are discretionary and are subject to reexamination and adjustment during the course of the case

.... The Court may review the case at its conclusion and take into account the results obtained in making a final allowance.”) (citations omitted); *In re Gibson*, 2010 WL 774573, *10 (Bankr. C.D. Ill. 2010) (interim orders allowing fee applications are subject to further review and modification by court) (citations omitted).

10. Against this background, a lengthy objection to the Fourth Interim Application is not required at this interim stage. The Parties reserve any and all rights to object to the final fee application filed by DSI in this Bankruptcy Case.

11. Prior to this Court permitting any interim payment on this Application, the Trustee should provide a more detailed accounting of the status of the Plan, the two “funds” set up by the Plan, and how and from which funds any payment on this Application is intended to be made. Disgorgement is an ongoing possibility, and no further interim payments may be warranted at this juncture.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court’s Electronic Case Filing System. Parties may access this filing through the Court’s system.

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I further certify that on June 10, 2013, a copy of the foregoing pleading was served by first-class U.S. mail, postage prepaid, or by electronic mail as indicated, to the following:

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